

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF	)	
ILLINOIS	)	
	)	Docket No. 14-0380
Petition for an Order Pursuant to Section 8-509 of	)	
the Public Utilities Act Authorizing Use of Eminent	)	
Domain Power.	)	

**INITIAL BRIEF OF AMEREN TRANSMISSION COMPANY OF ILLINOIS**

Dated: June 11, 2014

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## I. INTRODUCTION

In Docket 12-0598, the Illinois Commerce Commission authorized Ameren Transmission Company of Illinois (ATXI), pursuant to Sections 8-406.1 and 8-503 of the Public Utilities Act (the Act),<sup>1</sup> to construct, operate, and maintain a new 345 kilovolt (kV) electric transmission line across central Illinois. This project is known as the Illinois Rivers Project.<sup>2</sup> The Commission found the Project necessary to provide adequate, reliable, and efficient electric service to Ameren Illinois area customers. It also found that the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers, and that it is the least cost means of satisfying those objectives. The Commission approved a defined route for the Project, including the route segment from Meredosia, Illinois, generally north towards Ipava, Illinois. And—importantly—pursuant to Section 8-503 of the Act (220 ILCS 5/8-503), the Commission directed ATXI to construct the Project.<sup>3</sup>

The Meredosia to Ipava segment must be constructed and in service by 2017. To do this, ATXI needs easements on the real property that the segment traverses. Thus, for over eight months since the Commission's initial order in Docket 12-0598, ATXI has negotiated with landowners to purchase the easement rights it needs to construct, and then operate and maintain, the Meredosia to Ipava segment of the Project. In many cases, those negotiations were successful, and ATXI acquired the easements it needs.

In some cases, however, good faith negotiations have not been successful. But, whether ATXI's negotiations with the owners of land along the Commission's approved routes for the

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<sup>1</sup> 220 ILCS 5/8-406.1; 5/8-503.

<sup>2</sup> *Ameren Trans. Co. of Ill.*, Docket 12-0598, Order at 133-35 (Aug. 20, 2013); *Ameren Trans. Co. of Ill.*, Docket 12-0598, Second Order on Reh'g at 82-84 (Feb. 20, 2014).

<sup>3</sup> *Ameren Trans. Co. of Ill.*, Docket 12-0598, Order at 134; *Ameren Trans. Co. of Ill.*, Docket 12-0598, Second Order on Reh'g at 84.

Project are successful or not, ATXI must construct the Project, and do so on time. As a result, easement negotiations simply cannot go on forever. At some point, ATXI must acquire the requisite land rights by other means.

Section 8-509 of the Act authorizes the Commission to permit public utilities like ATXI to use eminent domain authority to condemn, in circuit court, the property rights it needs to carry out construction of projects authorized by the Commission. 220 ILCS 5/8-509. Before granting a request for eminent domain authority under Section 8-509, the Commission requires a utility to show that it has made reasonable attempts to acquire land rights for the Project.

In this proceeding, ATXI seeks eminent domain authority for 28 properties, owned by 25 primary landowners, along the route between Meredosia and Ipava (collectively the Unsigned Properties).<sup>4</sup> For most of the Unsigned Properties, the grant of eminent domain authority is unopposed. Only one landowner group, representing 3 of the 28 Unsigned Properties, submitted testimony in this proceeding opposing ATXI's petition: Aaron D. Stock, on behalf of Janelle, Jonathan and Rebecca Stock, and the Glen E. Stock and Iva M. Stock Land Trust dated January 14, 1992 (collectively the Stocks).

The evidence amply demonstrates that ATXI has made reasonable attempts to acquire the Unsigned Properties by negotiation. ATXI contacted the owners of the Unsigned Properties on average 25 times—in person and by phone, mail, and email—to negotiate easement acquisition. ATXI offered the landowners generous compensation for the easement rights it needs, and it

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<sup>4</sup> ATXI initially requested eminent domain with respect to 31 parcels, owned by 28 primary landowners, but has withdrawn its request for eminent domain with respect to the following three properties after an agreement was reached with the owners: (1) property internally designated as A\_ILRP\_MI\_MO\_034-ROW owned by Mr. Andrew Harris; (2) property internally designated as A\_ILRP\_MI\_MO\_033-ROW owned by Mr. and Mrs. James and Mary Harris, and (3) property internally designated as A\_ILRP\_MI\_SC\_088-ROW owned by Ms. Teresa Little. (ATXI Ex. 4.0 (Trelz Reb.), p. 2.) Maps depicting the location and layout of each of the Unsigned Properties are attached as Appendix A. Legal descriptions and sketches of each easement across the Unsigned Properties are attached as Appendix B.

explained its offers to them. ATXI's offers are based on a consistent methodology that takes into account extensive market and appraisal data, and the offers often approach 100% of fee value of the easement area for only easement rights. ATXI also addressed the landowners' concerns related to the easements ATXI needs, and, where feasible, it accommodated those concerns.

Regarding the Stocks, their predominant concern is that they want more compensation in exchange for an easement on their property (although they are also concerned about pole placement). But the value of the limited easement rights that ATXI needs in the Unsigned Properties is outside the scope of this proceeding. Moreover, as will be discussed, ATXI agreed on three occasions to relocate poles and has increased its offer of compensation for the easement on the Stocks' property. This confirms the reasonableness of ATXI's attempts to negotiate with the Stocks.

Despite ATXI's reasonable attempts, the owners of the Unsigned Properties will not sell ATXI the land rights it needs to construct the Illinois Rivers Project. Accordingly, ATXI needs eminent domain authority to acquire the easements and, in turn, construct the Project consistent with the Commission's directive in Docket 12-0598, thereby bringing the Project's benefits to Ameren Illinois area energy consumers without delay.

**A. ATXI requests limited easement rights in the Unsigned Properties.**

ATXI needs to acquire 150-foot wide transmission line easements across the Unsigned Properties. (ATXI Exs. 1.0, p. 6; 3.0 (Murbarger Dir.), p. 6.) A 150-foot wide right-of-way is generally the minimum necessary to construct and safely maintain the Project's 345 kV transmission line. (ATXI Exs. 1.0, p. 6; 3.0, p. 6.) That width will provide adequate National Electric Safety Code clearances from the conductor to any buildings, trees, or vegetation on the edge of the right-of-way. (ATXI Ex. 3.0, p. 6; *see also* NESC Rule 234C.1.) In some cases, ATXI also may need construction easements or access rights (for ingress and egress and

vegetation management), depending on the layout of the landowner's property and the location of the transmission line. (ATXI Exs. 1.0, p. 6; 3.0, pp. 6-7.) Construction easements are necessary if, during installation of the wires, the construction contractor needs to set up equipment outside the transmission line right-of-way. Construction easements, where necessary, could be up to 150 feet in width, in addition to the transmission line easement area. (*Id.*) Access rights are necessary if, in order to operate and maintain the line after it is constructed, ATXI must cross a landowner's property to reach the easement area or to maintain vegetation adjacent to it.

**B. ATXI's request is uncontested for all but one group of the Unsigned Properties.**

No party presented evidence contesting ATXI's need for eminent domain authority related to 25 of the 28 Unsigned Properties:

1	A_ILRP_MI_CA_020-ROW	06-018-014-00	Dorothy Hobrock c/o Dale Hobrock
2	A_ILRP_MI_SC_008-ROW;	01-004-012-00;	Susan K. Esther Trust
3	A_ILRP_MI_SC_029-ROW	01-026-006-00	
4	A_ILRP_MI_SC_023-ROW	01-031-002-00	Jennifer Ward, <i>et al.</i>
5	A_ILRP_MI_SC_033-ROW	01-023-006-00	Janie K. Ward, <i>et al.</i>
6	ILRP_MI_SC_100-ROW	01-013-002-00	Harold Ward, <i>et al.</i>
7	A_ILRP_MI_SC_032-ROW	01-037-016-00	Michael B. Potter
8	A_ILRP_MI_SC_034-ROW	01-022-010-00	Robert F. and Mary Jo Klebe
9	A_ILRP_MI_SC_038-ROW	01-021-015-00	Richard D. and Mary D. Lawler
10	A_ILRP_MI_SC_041-ROW	01-018-002-00	Larry A. Lenover Jr. and Larry A. Lenover Sr.
11	A_ILRP_MI_SC_078-ROW	07-004-011-00; 07-006-005-00	Lori and Brian Thomas
12	A_ILRP_MI_SC_109-ROW	04-026-007-00; 04-026-008-01; 04-026-008-00	Kenneth L. Tribbey Trust and Marjorie E. Tribbey Trust
13	A_ILRP_MI_SC_118-ROW	04-019-014-00	Gary Reno and Diane Schierbeck
14	A_ILRP_MI_SC_119-ROW	04-015-011-00	Judith A. and William H. Smart
15	A_ILRP_MI_SC_126-ROW;	04-014-016-00;	Jeffrey O. Merrick
16	A_ILRP_MI_SC_127-ROW	04-014-015-00	
17	A_ILRP_MI_SC_136-ROW	04-003-010-00	Danny Hodges
18	ILRP_MI_SC_120-ROW	01-014-015-00	Timothy D. and Nicole C. Wright

19	A_ILRP_MI_FO_030-ROW	24-26-01-300-003; 24-26-01-300-006	Charles M. Tolly and Susan D. Tolly Marital Deduction Revocable Living Trust #8750
20	A_ILRP_MI_FO_035-ROW	20-22-36-100-001; 20-22-25-300-003	Phyllis and Martin Rutledge; Robert Marland Marshall
21	A_ILRP_MI_FO_039-ROW	20-22-25-300-002	Nels E. and Linda D. Calvert
22	A_ILRP_MI_FO_040-ROW	20-22-25-100-002	Terry M. Arnett and Diana K. Arnett Declaration of Trust Dated October 12, 2012
23	A_ILRP_MI_FO_047-ROW	20-22-13-400-002	Chad A. and Sheila Vaughn
24	A_ILRP_MI_FO_049-ROW	20-22-13-200-001	Edward L. Wickert Living Trust Dated August 4, 2011 and Pamela C. Wickert Living Trust
25	ILRP_MI_FO_106-ROW	21-23-07-300-006	Laura Ann Wys

**C. Staff agrees that ATXI has satisfied the requirements for eminent domain authority for the Unsigned Properties.**

Staff agrees that “ATXI has demonstrated that it has made reasonable efforts to obtain the property rights it needs for the Meredosia to Ipava segment of the Illinois Rivers Project through use of logically and consistently derived initial compensation offers followed by discussions and negotiations with individual landowners,” in satisfaction of the requirements for eminent domain authority. (ICC Staff Ex. 1.0 (Rockrohr Dir.), p. 4.) Accordingly, Staff and ATXI agree that ATXI has satisfied the “reasonable attempts” requirements of Section 8-509.<sup>5</sup>

**II. STATUTORY AUTHORITY AND STANDARD OF REVIEW**

Section 8-509 of the Public Utilities Act permits a public utility to take, by eminent domain, private property necessary for the construction of utility facilities ordered or authorized by the Commission. 220 ILCS 5/8-509 (“When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or

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<sup>5</sup> Staff also noted that multiple land agents acting on behalf of ATXI contacted individual landowners during negotiations, but did not suggest that such contacts were insufficient under the Act. (ICC Staff Ex. 1.0, pp. 9-10.) ATXI, and CLS have undertaken a review of the number of land agents that contact each landowner, and the process by which agents are assigned to landowners. This review is ongoing and ATXI will make efforts to limit the number of agents that contact each landowner in the future, and will address steps taken or changes made as a result of the review in a future case. (ATXI Exs. 4.0, pp. 3-4; 5.0, pp. 2-4.)

12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.”). A utility seeking to take private property by eminent domain pursuant to Section 8-509 must first obtain Commission approval to exercise that authority in the circuit court. *See Ill. Bell Tel. Co. v. Lewis*, 117 Ill. App. 3d 72, 75 (4th Dist. 1983).

Section 8-509 requires both that a utility seeking eminent domain authority have permission under Sections 8-406.1 or 8-503 of the Act to construct the utility facilities at issue and that eminent domain be “necessary” for construction. *See Ameren Ill. Co.*, Docket 13-0516, Order at 3 (Oct. 23, 2013); *Ill. Power Co.*, Docket 10-0173, Order at 3 (Nov. 23, 2010). In determining whether eminent domain is necessary, the Commission requires the utility to show that it has made a reasonable attempt to acquire the property rights it needs. *See, e.g., Ameren Ill. Co.*, Docket 13-0516, Order at 3 (citing *Ill. Power Co.*, Docket 06-0706, Order at 88 (Mar. 11, 2009)); *Ameren Ill. Co.*, Docket 13-0456, Order at 3 (Sept. 10, 2013); *Ameren Ill. Co.*, Docket 11-0469, Order at 3 (Dec. 13, 2011); *Ill. Power Co.*, Docket 10-0173, Order at 3 (Nov. 23, 2010); *Ill. Power Co.*, Dockets 08-0291/0449 (cons.), Order at 15 (June 9, 2009) (citing *Cent. Ill. Pub. Serv. Co.*, Docket 07-0532, Order at 14 (May 6, 2009)). The Commission evaluates whether a utility has made reasonable efforts to negotiate for the property rights it needs by considering five factors:

- (1) the number and extent of contacts with the landowners, (2) whether the utility has explained its offer of compensation, (3) whether the offers of compensation are comparable to offers made to similarly situated landowners, (4) whether the utility has made an effort to address landowner concerns, and (5) whether further negotiations will likely prove fruitful.

*See* Staff Ex. 1.0, pp. 2-3; *see also Ameren Ill. Co.*, Docket 13-0456, Order at 3; *Ameren Ill. Co.*, Docket 13-0516, Order at 3; *Ameren Ill. Co.*, Docket 11-0469, Order at 3; *Ill. Power Co.*, Docket



10-0173, Order at 14-16; *Cent. Ill. Pub. Serv. Co.*, Docket 95-0484, Order at 13 (July 17, 1996); *Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, Order at 24 (Oct. 3, 1990); *Mount Carmel Pub. Util. Co.*, Docket 91-0113, Order at 6 (May 16, 1991); *Cent. Ill. Pub. Serv. Co.*, Docket 90-0206, Order (Jan. 9, 1991); *Cent. Ill. Pub. Serv. Co.*, Docket No. 90-0427, Order (Apr. 3, 1991).

Notably, although the Commission considers the reasonableness of utilities' efforts to make offers of compensation, it is well established that whether an offer is just compensation for an easement lies within the jurisdiction of the circuit court, not the Commission. *See, e.g., Rich v. City of Chicago*, 59 Ill. 286, 294 (1871) (finding "the act of ascertaining the value is . . . judicial in its nature" and the judicial department is the proper entity to determine the question of just compensation); *Forest Preserve Dist. v. West Suburban Bank*, 161 Ill. 2d 448, 457 (1994) ("The very purpose of an eminent domain proceeding [in state court] is to determine the amount of just compensation constitutionally owed to the landowner.") (citing *Ill. Cities Water Co. v. City of Mt. Vernon*, 11 Ill. 2d 547, 551 (1957)). Accordingly, the Commission will not consider valuation of the property rights sought in a Section 8-509 proceeding. Ill. Adm. Code § 300 Appendix A ("The Commission also does not establish or approve the negotiated price and other terms for the acquisition of land or land rights."); *see also, Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, 1990 Ill. PUC LEXIS 504, Order at \*24-25 (Oct. 3, 1990) ("The Commission notes that it does not have the authority to establish the price to be paid to landowners for right-of-way. That issue is to be decided by the courts."). As the Commission explained in Docket 10-0173, "the Commission does not intend to make any pronouncements regarding the actual value of any parcel sought in an eminent domain proceeding." *Ill. Power Co.*, Docket 10-0173, Order at 16. And the Commission reaffirmed this in ATXI's most recent eminent domain proceeding, stating, "[t]o the extent that there are any flaws in the appraisals, including any failure to reflect a

diminution in the value of the property outside of the easement area, such concerns are within the purview of a circuit court, not the Commission.” *Ameren Trans. Co. of Ill.*, Docket 14-0291, Order at 18 (May 20, 2014). So while the Commission will evaluate whether the utility made comparable offers to landowners with similar circumstances and explained the basis for its compensation offered, it does not make any determination about the *amount* of those offers. *Ameren Trans. Co. of Ill.*, Docket 14-0291, Order at 18; *Ill. Power Co.*, Docket 10-0173, Order at 16; *see also Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, 1990 Ill. PUC LEXIS 504, Order at \*24-25.

### **III. CONTACT WITH LANDOWNERS**

ATXI first began contacting the owners of the Unsigned Properties in September 2013, after the Commission issued its Order in Docket 12-0598 authorizing construction of the Meredosia to Ipava segment of the Project, among others. (ATXI Ex. 1.0, p. 6.) Specifically, on September 6, 2013, ATXI sent by certified mail, return receipt requested, to the persons identified as the current owners of the Unsigned Properties in the records of the pertinent county Tax Collectors, a letter and “Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights of Way by Illinois Utilities” consistent with 83 Illinois Administrative Code Part 300. (*Id.*)

Two weeks after those mailings, beginning on September 21, 2013, ATXI began contacting the owners of the Unsigned Properties directly. (*Id.* at 7.) ATXI, through its professional land agents, contacted landowners, in person if possible, to discuss the purpose of the Project and the reason for the contact. (*Id.* at 7-8; ATXI Ex. 2.0, p. 4.) At this time, ATXI also provided landowners with a written statement of the Project’s purpose, a small-scale map, and a property-specific option exhibit (sketch), as well as information regarding the type and location of the proposed facilities. (ATXI Exs. 1.0, pp. 7-8; 2.0, p. 4; *see e.g.* ATXI Ex. 2.3(A),

p. 3 (signed agent checklist verifying agent discussed and provided landowner certain information, including the approximate location of poles); *see also* ATXI Ex. 1.2 (sample landowner packet).)

During this second contact, ATXI also offered compensation for the easements it needs to acquire to construct the Project. (ATXI Exs. 1.0, pp. 7-8; 2.0, pp. 4-5.) The offers were based on an independent third-party appraiser's determination of the market value of each property. (ATXI Exs. 1.0, pp. 7-8; 2.0, pp. 4-5.) ATXI explained this to each landowner, and provided each with a property calculation worksheet, based upon the appraisers' opinion and including compensation for other items such as crop damage, where applicable. (ATXI Exs. 1.0, pp. 7-8; 2.0, pp. 4-5.) ATXI also provided to each landowner, when completed, the appraisal of his or her property, which included the valuation of the easement and a determination of any diminution of value to the remaining property, if pertinent. (ATXI Exs. 1.0, pp. 7-8; 2.0, pp. 4-5.) Additionally, ATXI explained to the landowners the dimensions of the easement it sought and the proposed easement agreement document. (ATXI Exs. 1.0, pp. 7-8.) Finally, ATXI ensured its representatives were available for discussion and negotiations as required and/or requested by each landowner. (ATXI Exs. 1.0, pp. 7-8; 2.0, pp. 4-5; *see also* ATXI Ex. 1.3 (sample "check list" of items to be addressed by ATXI's professional land agents during their first meeting with landowners).)

Thereafter, ATXI contacted or attempted to contact—by letter, email, phone, or in person—each owner of the Unsigned Properties at least eleven times. On average, each landowner of the Unsigned Properties was contacted 25 times. (ATXI Ex. 2.1.) The record confirms the extent of the negotiations with the Unsigned Properties. (ATXI Exs. 1.0, pp. 8-9; 2.1 (contact log providing number and type of contact for each Unsigned Property); 2.4

(describing ATXI's discussions and negotiations with each landowner); 2.2 (2d Rev.)

(Confidential) (detailing offers and counteroffers made).)

These efforts to contact landowners are similar to those the Commission consistently finds reasonable. *See, e.g., Ameren Trans. Co. of Ill.*, Docket 14-0291, Order (granting utility eminent domain authority where it contacted landowners at least seven times); *Ameren Ill. Co.*, Docket 13-0456, Order (Sep. 10, 2013) (granting utility eminent domain authority where it contacted landowners at least 15 times); *Ameren Ill. Co.*, Docket 13-0516, Order (Oct. 23, 2013) (granting utility eminent domain authority where it contacted landowners at least 15 times); *Ameren Ill. Co.*, Docket 11-0469, Order (Dec. 13, 2011) (granting utility eminent domain authority where it contacted landowners at least 11 times).

#### **IV. EXPLANATION OF COMPENSATION OFFER**

The record reflects that ATXI has explained, in detail, the basis for its offers of compensation to each owner of the Unsigned Properties. ATXI provided each landowner and/or their attorney with a detailed calculation sheet stating the easement acreage, the percentage of total market value of a fee simple interest in their land at which ATXI believed the easement should be valued, and ATXI's compensation offer itself. (ATXI Exs. 1.2 (sample calculation sheet); 2.0, p. 6.) ATXI also explained to the landowners that its initial offer was based on an independent, third-party appraiser's determination of the market value of their property. (*Id.*)

In addition, ATXI explained how it plans to address any construction damages to property. Specifically, ATXI told landowners that it is responsible for the restoration of, or payment of damages for, their property, and that it would notify each landowner before construction commenced. (ATXI Ex. 1.0, p. 10.) For agricultural property, ATXI offered the landowners the option to receive prepaid damages for anticipated crop loss, on a graduated basis, spread over a five-year period. (*Id.*) ATXI also offered prepayment for anticipated general

property damages, such as compaction and deep ripping, and restoration activities, such as fertilizing, rutting and reseeded. (*Id.*) If a landowner did not accept prepayment, ATXI explained that it would assess their property individually for damage at the end of the construction phase, and provide compensation at that time. (*Id.*) Finally, ATXI explained, it would assign an ATXI representative to be available to each landowner for the purpose of reporting any construction damage. (ATXI Ex. 2.0, p. 5.)

## **V. REASONABLENESS OF COMPENSATION OFFERS**

ATXI intends to fairly compensate landowners for the impact of the Project on their property so that, after the Project is constructed, there is no impact to the property that results in a diminution in value beyond that reflected in the compensation that ATXI paid. (ATXI Ex. 1.0, p. 10.) Therefore, ATXI offered compensation intended to make landowners whole by fully compensating for any impact on the market value of their property caused by imposition of the easement and the presence of the transmission line. (*Id.*)

### **A. ATXI's initial compensation offers exceeded the appraised market value impact of the easement it needs to construct the Project.**

ATXI is only seeking easements across the Unsigned Properties. ATXI is not seeking to acquire the land in fee. Within the easement area, the landowners will retain all remaining property rights apart from ATXI's easement rights. (*Id.* at 12.) Nevertheless, ATXI initially offered all of the Unsigned Properties' landowners 90% of the fee value of the easement area. (*Id.*) When combined with a signing bonus, ATXI's initial offers amounted to the full fee value of the easement acreage. (*See id.* at 13.) And ATXI offered additional damages related to crops or construction, as outlined above.

### **B. ATXI's compensation offers are based on a consistent methodology for all landowners.**

ATXI developed its offers of compensation based on a methodology designed to produce

comparable offers for similarly situated landowners. (*See* ICC Staff Ex. 1.0, p. 6.) ATXI retained the appraisal firm Allen, Williford and Seale, Inc., a national appraisal firm that specializes in large infrastructure projects, to prepare an appraisal report for each property over which ATXI needs easement rights. (ATXI Exs. 1.0, pp. 11-12; 4.0, p. 6.) ATXI applied the same methodology to each property. The appraisals determined the total market value of each property, if purchased in fee, based on the current highest and best use of the property. (ATXI Ex. 1.0, p. 11.) This determination took into account “all factors willing, knowledgeable buyers and sellers would consider in negotiating the purchase price of the property[,] except the influence of the proposed project.” (ATXI Ex. 1.4, p. 6.) These factors include, but are not limited to the following: (1) “the size, shape, zoning classification and other physical characteristics of the subject property in relation to the comparable market data” (other factors regarding the market data were also considered, including “location, market conditions, conditions of sale, and other characteristics”); (2) “the location of the proposed easement along the property;” (3) “the impact of the easement on the subsurface, surface, and air right estates for the property; and (4) if the property is agricultural, the productivity index and publicly available soil quality and flood maps, which reveal the portion of the land that is tillable.”<sup>6</sup> (ATXI Exs. 1.4; 4.0, p. 7.)

The appraisers then determined the effect on the market value of the property caused by imposition of the transmission line easement, including whether any property outside of the easement strip would suffer diminution in value. (ATXI Ex. 1.0, p. 12.) From this the value of the easement was derived, as the difference between the market value of the property with and

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<sup>6</sup> This determination did not consider whether there are any existing easements on the property, and the appraisal did not apply a discount for the existence of any such easements. (ATXI Ex. 1.4.) This only benefits landowners whose property’s market value may have been impacted by existing encumbrances.

without the easement. Typically, this value was 90% of the fee value of the easement acreage. (*Id.*)

ATXI's initial offers also included compensation for other factors: crop damages equal to three years of crop loss for the entire easement area (to be paid on a graduated basis over five years), plus any additional non-crop land damages. (*Id.* at 12; ATXI Ex. 1.2.) ATXI's compensation offers also considered drainage tile damage. (ATXI Ex. 1.0, p. 11.) In fact, ATXI and the Illinois Department of Agriculture have agreed on a method for identifying and repairing damaged tile, and, on November 8, 2012, entered into an Agricultural Impact Mitigation Agreement (AIMA) reflecting their agreement related to drainage tile as well as a broad range of agricultural concerns. (*Id.*)

ATXI also offered each landowner a 10% signing bonus if they signed the easement agreement by December 31, 2013. Then, in order to encourage settlement with unsigned landowners, ATXI extended that bonus period to January 31, 2014. (ATXI Ex. 1.0, pp. 12-13.)

ATXI used the same methodology to determine the appropriate compensation for each easement it needs, and it considered future damages as well as characteristics unique to each of the Unsigned Properties. By using this same methodology for all landowners, ATXI's initial offers are reasonable and comparable. (*See* ICC Staff Ex. 1.0, p. 6.)

**C. ATXI's methodology is similar to those approved by the Commission in the past.**

The Commission has granted eminent domain authority to other utilities using the same or a similar methodology to determine offers to acquire land rights for electric transmission lines. *See, e.g., Ameren Trans. Co. of Ill.*, Docket 14-0291, Order (granting eminent domain authority after utility made initial offers of 90% of appraised fee value); *Ameren Ill. Co.*, Docket 13-0456, Order (granting eminent domain authority after utility made initial offers of 75% of appraised fee

value); *Ameren Ill. Co.*, Docket 13-0516, Order (same); *Ameren Ill. Co.*, Docket 11-0469, Order (granting eminent domain authority after utility made initial offers of 50-75% of appraised fee value); *Illinois Power Co.*, Docket 10-0173, Order (same). ATXI's offer of a substantial portion of the full market value of the land, despite that the landowners retained all other rights incident to the land, is also consistent with prior approved methodologies. (*Id.*) *See generally, Ill. Power Co.*, Dockets 08-0291/0449 (cons.), Order (granting utility eminent domain authority where its initial compensation offers were at least 75% of fee value).

**D. ATXI revised compensation offers to reasonably accommodate landowner concerns.**

Despite ATXI's compensation offers of the full fee value of the easement, ATXI has not reached agreement with the owners of the Unsigned Properties. In most cases, the Unsigned Properties' landowners considered ATXI's offer too low, citing either damage to the remainder of the property or a difference of opinion regarding the highest and best use of the property as the basis for their refusal. (ATXI Ex. 1.0, pp. 13-14; *see also* ATXI Ex. 1.4.) ATXI made efforts to address landowners' concerns when it was able to do so. (ICC Staff Ex. 1.0, p. 6.) ATXI encouraged all landowners to provide their own current appraisal for their property. (ATXI Ex. 1.0, p. 15; ICC Staff Ex. 1.0, p. 6.) In some instances, ATXI increased its initial compensation offer to reflect additional valuation information that the landowners provided ATXI or additional sales of comparable property in the area. (ATXI Ex. 1.0, p. 14.)

Like ATXI's initial compensation offers, and for the same reason, the revised offers were reasonable. The 90% of fee value of the easement property that ATXI initially offered is fair compensation for the easement rights it sought. Accordingly, any higher offers are similarly fair. (*Id.* at 15.)



**E. The Stock's objections relate to the amount of compensation; but differences over the amount of compensation do not signal bad faith negotiations.**

The Stocks are the only party opposing a grant of eminent domain authority. They raised concerns in testimony about the appraisals offered by ATXI, and about the location of the transmission line structures on their property.

The Stocks' appraisal concerns are primarily disagreements about the value of the Stock properties, rather than the negotiation process itself; therefore, these concerns do not support a finding that ATXI has not made reasonable attempts to negotiate. As discussed above, courts, not the Commission, consider whether the dollar value offered to the landowner is just compensation for the property. *Forest Preserve Dist. v. West Suburban Bank*, 161 Ill. 2d 448, 457 (1994) ("The very purpose of an eminent domain proceeding [in state court] is to determine the amount of just compensation constitutionally owed to the landowner."). Thus, although the Commission considers whether a utility seeking eminent domain authority has made reasonable efforts to negotiate with landowners, this reasonableness inquiry does not extend to the dollar value of the offers themselves.

Mr. Aaron Stock challenges the accuracy and completeness of ATXI's appraisals for what Mr. Stock refers to as the North Farm, internally referenced as A\_ILRP\_MI\_CA\_036\_ROW and A\_ILRP\_MI\_CA\_045\_ROW, and for the South Farm, internally referenced as A\_ILRP\_MI\_CA\_026\_ROW. (Stock Ex. 1.00, p. 7.) Specifically, for the North Farm, Mr. Stock complains that ATXI's offer failed to reflect the unique nature and purpose of the North Farm. (*Id.* at 5.) He asserts that in addition to the appraiser's failure to visit the property and discuss the property and the type of crops grown on the property with anyone associated with the property, the appraisal fails to consider: (1) damage to the remainder of the property; (2) comparable properties within Cass County; (3) the Stocks' use of the

property to cultivate “premium” crops; and (4) existence of and damage to drainage tile and irrigation systems. (*Id.* at 4-6.) Mr. Stock also alleges the appraisal for the South Farm is deficient because it does not include compensation for damages to the remainder. (*Id.* at 8.)

Because these considerations clearly relate to the value of the land, they are properly determined by a circuit court during the course of eminent domain proceedings, not by the Commission. In fact, in ATXI’s most recent eminent domain proceeding, the Commission confirmed that concerns regarding any alleged flaws in the appraisals, including any failure to reflect diminution to the value of the property outside the easement area, are within the purview of a circuit court. *Ameren Trans. Co. of Ill.*, Docket 14-0291, Order at 18.

Even so, each of the items of concern raised by Mr. Stock were appropriately addressed or considered in ATXI’s appraisal or compensation offers. First, ATXI used appraisers licensed and certified in Illinois, who specialize in appraisals related to large infrastructure projects, and who abided by the Uniform Standards of Professional Appraisal Practice, which are the generally accepted standards for professional appraisal practice in North America. (ATXI Ex. 4.0, p. 6.) Mr. Stock testified that ATXI’s appraisal was inadequate because its appraisers were not headquartered in the area, and did not physically enter the Stock’s property during the appraisal process. (Stock Ex. 1.00, p. 5.) Regardless of the physical location of the firm, all the individual appraisers who performed the appraisals for the Project are licensed and certified in Illinois. (ATXI Ex. 4.0, p. 6; Stock Cross Ex. 1, p. 21.) And there is nothing unusual about using an out-of-state appraiser—in fact, the appraiser retained by the Stocks for the South Farm is headquartered in Missouri. (ATXI Ex. 4.0, p. 7; ATXI Cross Ex. 1, p. 3.)

And the Stocks’ insinuations that ATXI’s appraisers had no contacts with Illinois or with the properties themselves are similarly without merit. In addition to AWS’s expertise in right-of-

way appraisal projects nationwide, the AWS appraisers have extensively researched market data specific to the Project. (ATXI Ex. 4.0, p. 6.) AWS established a field office in Chatham, Illinois for five months in 2013. (Stock Cross Ex. 1.0, p. 25.) And the AWS appraisers visited the area of the Stocks' property and inspected it from the public right of way. (Stock Cross Ex. 1.0, pp. 12-13.) Indeed, the Stocks themselves concede the appraiser they hired did not physically inspect the property about which they complain. (ATXI Cross Ex. 1, p. 3.)

Second, ATXI's appraisers did consider whether damage to the remainder was warranted for each property appraised (ATXI Ex. 1.4, p. 7), and in the rare instances where such damage was found, ATXI included it in its compensation offers. (ATXI Ex. 4.0, p. 10; Stock Cross Ex. 1, p. 14 (response to Stock-ATXI 1.16).) ATXI's appraisers considered the possibility of damage to the remainder of the Stocks' property and determined that there would be no such damage. (Stock Ex. 1.03, p. 5; Stock Cross Ex. 1, p. 20 (response to data request Stock-ATXI 1.22).)

Third, the appraisals on which ATXI's offers of compensation were based considered properties in Cass and Morgan Counties that are comparable to the Stocks' property. (ATXI Ex. 4.0, p. 10.) Although Mr. Stock claims that the appraisal should have considered more comparable properties in Cass County, and that doing so would have increased the appraised value of the North Farm, the Stocks have not submitted any evidence substantiating Mr. Stock's claim that Cass County properties have higher values. (*Id.*) Nor have the Stocks provided ATXI with an appraisal of the North Farm. (*Id.*)

Fourth, with respect to Mr. Stock's accusations about ATXI's failure to consider the premium nature of his crops, ATXI's appraisal did account for the very elements that Mr. Stock alleges make the North Farm capable of growing premium crops: the existence of the irrigation

system and proximity to the Illinois River. (ATXI Ex. 4.0, p. 8; Stock Cross Ex. 1, pp. 2, 4.) In addition, ATXI considers and provides payment related to crop damages in its offers of compensation. (ATXI Ex. 5.0, p. 4.) If Mr. Stock experiences—and can document—higher crop yields or higher sales value for his crops, that would be reflected in the amount of crop damages included in ATXI’s offer of compensation. (*Id.*) Unfortunately, as of the time of rebuttal, Mr. Stock had not, however, provided ATXI with any verifiable documentation demonstrating unique damages or an appraisal or counteroffer for the North Farm for the Company to consider. (*Id.* at 5-6.) And regardless, consideration of any resulting effect on the appropriate amount of compensation is outside the scope of this proceeding. *Forest Preserve Dist. v. West Suburban Bank*, 161 Ill. 2d 448, 457 (1994).

Next, the Stocks claimed that the presence of drainage tile increases the value of their property. But ATXI entered an AIMA with the Illinois Department of Agriculture that obligates ATXI to abide by certain procedures in identifying and repairing or compensating for damage to drainage tile on affected properties. (ATXI Ex. 1.0, p. 11.) Because any damage to drainage tile will be fully compensated for or repaired, the value of the drainage tile was not considered within the appraisals. Moreover, throughout the lengthy negotiations with ATXI, the Stocks did not mention that drainage tile existed on their property—the issue was raised for the first time in their direct testimony, where it was not supported by any documentation. (*Id.*) Nevertheless, if drainage tiling does exist on the Stock’s property, and is damaged by construction of the Project, ATXI will restore the tiling or compensate the landowners.

In sum, Mr. Stock has not substantiated his criticism of ATXI’s negotiations. Although the Stocks raise a wide variety of allegations regarding the appraisals of their property, the Commission need not consider these issues, as they relate to valuation. Instead, the Commission

need only determine whether ATXI made reasonable efforts to negotiate with landowners. For the Stocks, as discussed, ATXI has agreed to two pole relocations for the North Farm, and a pole relocation and increased offer for the South Farm. This confirms that ATXI has negotiated in good faith.

## **VI. RESPONSIVENESS TO LANDOWNER CONCERNS**

Throughout the negotiation process, ATXI addressed landowner concerns unrelated to compensation. Some of those concerns related to specific changes landowners proposed to the language of the easement document. (ATXI Ex. 1.0, p. 16.) ATXI considered each proposed changes individually. Where it could incorporate the changes without compromising the easement rights it needs for the Project, ATXI agreed to revise the easement document. (*Id.*) Some proposed changes to the document, however, would impose restrictions or otherwise unreasonably limit the usefulness or intent of the easement. (*Id.*; *see also* ATXI Ex. 2.3 (describing discussions)). ATXI could not accommodate those changes.

As ATXI Exhibit 2.3 shows, ATXI routinely negotiates changes to easement language to address landowner concerns. For example, ATXI has engaged in extensive negotiations with attorney William M. Shay, who represents several landowners along the Meredosia to Ipava route, concerning his clients' concerns with respect to usage of land adjacent to the easement, ingress to the easement, and interference with irrigation equipment. (*See, e.g.*, ATXI Ex. 2.3 Parts U, V, W, Y.)

Other landowners expressed concerns regarding the routing of the line and requested that ATXI alter the proposed location of the transmission line structures on their property. (ATXI Ex. 1.0, pp. 16-17.) ATXI was willing to accommodate those requests provided they do not compromise ATXI's design standards for reliability and/or the integrity of the line, and otherwise are consistent with applicable regulatory approvals and requirements. (*Id.*; *see also*

ATXI Ex. 2.3 (describing discussions); ICC Staff Ex. 1.0, pp. 6-7 (noting ATXI's efforts to resolve landowner concerns about pole placement, reseeding, timber disposal and soil spoil).) As ATXI Exhibit 2.3 shows, ATXI routinely made changes to pole locations to address landowner concerns.

As explained, the Stocks oppose ATXI's request for eminent domain. But ATXI has been more than reasonable in responding to the Stocks' concerns. ATXI relocated structures three times at the request of Mr. Aaron Stock. Mr. Stock first requested a relocation so as not to interfere with the irrigation system on the North Farm. (ATXI Ex. 5.0, p. 5.) ATXI accommodated this request. (*Id.*) Later, Mr. Stock asked ATXI to move the same structures an additional ten feet from the irrigation system. (*Id.*) ATXI was again able to accommodate this request. (*Id.*) With respect to the South Farm, ATXI accommodated Mr. Stock's request to relocate the line structures west of their original intended location. (ATXI Exs. 5.0, p. 6; 6.0, pp. 3-6.) ATXI could not accommodate Mr. Stock's subsequent requests to move the poles even further west because it would be too costly—as much as an additional \$230,000 in materials and vegetation management costs alone. (ATXI Ex. 6.0, pp. 4-6.) Thus, the record reflects ATXI's extensive and substantial efforts to understand and accommodate landowners' concerns.

## **VII. USEFULNESS OF FURTHER NEGOTIATIONS**

ATXI has made reasonable attempts to acquire the Unsigned Properties over many months, and will continue to pursue negotiated resolutions. But further negotiations are not expected to be successful. What is ultimately critical in granting relief under Section 8-509 is not whether continued negotiations might be beneficial, but whether ATXI has engaged in reasonable and good faith negotiations in its efforts to acquire the necessary land rights. The evidence quite clearly supports the granting of Section 8-509 relief, despite the fact attempts have not been successful with the Unsigned Property owners. Therefore, a grant of eminent

domain authority is appropriate. *See, e.g., Commonwealth Edison Co.*, Docket 05-0188, Order at 7 (Feb. 23, 2006) (granting utility eminent domain authority where it had attempted to acquire the necessary property by voluntary or reasonable terms, but had not been successful in doing so); *Cent. Ill. Pub. Serv. Co.*, Docket 95-0484, Order, 1996 Ill. PUC LEXIS 368 \*\*11-13 (July 17, 1996) (granting utility eminent domain authority where it had numerous telephonic and face to face contacts with landowners, had independent appraisals of the property interests made and made reasonable offers based on those appraisals, to no avail).

That ATXI is willing to continue to negotiate is not a basis for denying Section 8-509 authority. ATXI cannot now be assured of acquiring rights-of-way in the Unsigned Properties by negotiation in time to meet the Meredosia to Ipava segment construction schedule. So eminent domain authority is needed now. Again, for over eight months (since September 2013), ATXI has contacted the landowners of the Unsigned Properties many times, and it has offered reasonable and fair compensation for limited easement rights in their property. (*See supra* Sections III, V.) Despite these reasonable attempts, no settlements have been reached for the Unsigned Properties. But the Illinois Rivers Project, and specifically the Meredosia to Ipava segment of the Project, cannot wait forever for resolution. As explained, ATXI must adhere to the construction schedule for this segment. (*See supra* Section I.)

With respect to the Stocks, ATXI does not expect future negotiations to be successful, given the outcome of negotiations to date. The Stocks admit they are unwilling to agree to ATXI's most recent offers of compensation. (ATXI Cross Ex. 1, p. 11 (response to ATXI-Stock data request 1.15).) Given the Stocks' reticence, it is unlikely that agreement will be reached with respect to either the North Farm or the South Farm.

Notably, if the Commission grants ATXI eminent domain authority here, ATXI next will

be required to seek an order authorizing condemnation from the circuit court before it can proceed with construction on the Unsigned Properties. (ATXI Ex. 1.0, p. 19.) Absent settlement, that process can take up to a year, and this time frame must be considered in relation to the in-service dates of the segments at issue. (*Id.*) The fact that reasonable negotiations have not been successful to date, and the possibility of eminent domain proceedings taking a year, mean ATXI must proceed to eminent domain now.

## **VIII. CONCLUSION**

The evidence demonstrates that ATXI has made reasonable attempts to acquire the necessary property rights to the Unsigned Properties through good faith negotiations. With regard to the Stocks, the undisputed evidence is that ATXI accommodated three pole location change requests, and made a revised offer after approximately eight months of negotiation, which included at least 50 contacts. (ATXI Ex. 2.3(C).) Despite this, however, it is unlikely that ATXI will be able to obtain property rights for the Stocks or any of the Unsigned Properties through negotiation. ATXI must obtain eminent domain authority for permanent easements, and where necessary, construction easements and access rights, across the Unsigned Properties to acquire the rights.

ATXI respectfully requests that the Commission authorize Petitioner's use of eminent domain to acquire all necessary land rights for construction of the Illinois Rivers Project, including permanent easements, temporary construction easements, and access rights for ingress, egress and vegetation management, across the Unsigned Properties as identified and shown on Appendix A and legally described in Appendix B, pursuant to Section 8-509 of the Act, and such further relief as deemed equitable and just.



Dated: June 11, 2014

Respectfully submitted,

AMEREN TRANSMISSION  
COMPANY OF ILLINOIS

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**CERTIFICATE OF SERVICE**

I, Albert D. Sturtevant, an attorney, certify that on June 11, 2014, I caused a copy of the foregoing *Initial Brief of Ameren Transmission Company of Illinois* to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 14-0380.

/s/ Albert D. Sturtevant

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